

# **RESPONSE EXHIBIT F**

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

FILE COPY

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
MICHAEL J. NOVOTNY\*\*\*  
TIMOTHY D. HELMAN

275 AIKENS CENTER  
P. O. BOX 2509  
MARTINSBURG, WV 25402-2509  
TELEPHONE (304) 264-4621  
FACSIMILE (304) 264-8623



CLARKSBURG OFFICE  
ONE VALLEY BANK BUILDING  
PO DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE: (304) 626-1100  
FACSIMILE: (304) 623-3035

C. DAVID McMUNN  
J. CECIL JARVIS  
JAMES A. VARNER\*  
JAMES N. RILEY  
DENNIS M. SHREVE  
GRALDINE S. ROBERTS  
JUDY L. SHANHOLTZ\*\*\*\*  
TIFFANY R. DURST  
MICHAEL D. CRIM\*\*\*\*\*  
HEATHER MCVICKER THAYER  
DEBRA T. HERRON  
REBECCA A. DONNELLAN  
SAM H. HARROLD, III  
LINDA HAUSMAN  
STACY L. MONDAY

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATKE\*\*

KINGWOOD OFFICE  
107 WEST COURT STREET  
PO BOX 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
LISA HARTLEY  
REBECCA L. ERITANO

OF COUNSEL  
JAMES E. MCNEER  
CECIL B. HIGHLAND, JR  
(1918-2002)  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

SENIOR LEGAL ASSISTANTS  
MILDRED L. KENNEDY  
DIANA L. BEDELL

\*ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
\*\* ALSO ADMITTED TO PRACTICE IN OHIO  
\*\*\* ALSO ADMITTED TO PRACTICE IN MARYLAND  
\*\*\*\* CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
\*\*\*\*\* ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

January 11, 2005

Michael D. Burke, Esquire  
Burke, Schultz, Harman & Jenkinson  
85 Aikens Center  
Edwin Miller Blvd.  
Martinsburg, WV 25401

Re: Barbara Ann Miller, Debtor  
Bankruptcy Case No.: 04-03365

Asset: Medical Malpractice Claim

Dear Mr. Burke:

Please be advised that the undersigned is the Chapter 7 Trustee appointed by the United States Bankruptcy Court for the Northern District of West Virginia to administer the Bankruptcy Estate of Barbara Ann Miller, referenced as Bankruptcy Case No.: 04-03365.

At the Section 341 Meeting of the Debtor, she testified that you are handling a medical malpractice claim on her behalf. I have enclosed herewith an Authorization executed by the Debtor to allow you to provide information and documentation to me in relation to this claim.

January 11, 2005  
Michael D. Burke, Esquire

Page - 2

In order to make a prompt determination as to the Estate's interest in this claim, I respectfully request that you provide to me a written status report concerning the status of negotiations, if any, or if any scheduling deadlines have been set. Further, please advise me of your valuation as to the potential recovery which the Debtor may expect to receive as a result of this medical malpractice claim and whether this case is being handled by your office on a contingent or hourly basis.

Please provide me with this information and documentation within ten (10) days from the date of this letter. Once I have had an opportunity to review the same, I will advise you whether I intend to administer this claim as part of this Bankruptcy Estate or abandon my interest in the same.

Should you have any questions or require any additional information, please do not hesitate to contact me at the Martinsburg telephone number listed above.

Very truly yours,

  
Robert W. Trumble, Trustee

/kf  
Enclosure(s)

xc: William A. O'Brien, Esquire

**BURKE • SCHULTZ  
HARMAN & JENKINSON**  
ATTORNEYS AT LAW

D. Michael Burke

Lawrence M. Schultz

Ronald M. Harman  
Licensed in WV, MD & D.C.

Mark Jenkins  
Licensed in WV & MD

Of Counsel  
**Barry J. Nace**

Licensed in D.C., MD, PA & WV

85 Aikens Center (Edwin Miller Blvd.) • P.O. Box 1938 • Martinsburg, WV 25402  
304.263.0900 • [www.burkeandschultz.com](http://www.burkeandschultz.com) • fax 304.267.0469

January 25, 2005

Robert W. Trumble, Esquire  
McNeer, Highland, McMunn and Varner, L.C.  
275 Aikens Center  
P.O. Box 2509  
Martinsburg, WV 25402-8623

Re: Barbara Ann Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Trumble:

The potential claim of Barbara Miller is being reviewed by Barry J. Nace, my co-counsel who is from Washington, D.C.

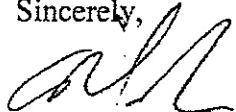
Until the medical review is done, it will be impossible to evaluate her case or even the likelihood of recovery.

Medical Malpractice cases do not settle with the same frequency that automobile accidents and other types of torts do. They are always very difficult cases, are hotly contested and result in trial more frequently than in settlement.

I wish I could give you a more accurate picture of Ms. Miller's case, but unfortunately I am unable to do so.

If you need any additional information, please do not hesitate to contact me.

Sincerely,



D. Michael Burke

DMB/dfw

cc: William O'Brien, Esquire

**FILE COPY**

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

275 AIKENS CENTER

P. O. Box 2509

MARTINSBURG, WV 25402-2509

TELEPHONE (304) 264-4621

FACSIMILE (304) 264-8623

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
MICHAEL J. NOVOTNY\*\*\*  
TIMOTHY D. HELMAN

CLARKSBURG OFFICE  
ONE VALLEY BANK BUILDING  
PO DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE: (304) 626-1100  
FACSIMILE: (304) 623-3035

C. DAVID MCNEER  
J. CECIL JARVIS  
JAMES A. VARNER\*  
JAMES N. RILEY  
DENNIS M. SHREVE  
GRALDINE S. ROBERTS  
JUDY L. SHANHOLTZ\*\*\*\*  
TIFFANY R. DURST  
MICHAEL D. CRIM\*\*\*\*  
HEATHER MCIVICKER THAYER  
DEBRA T. HERRON  
REBECCA A. DONNELLAN  
SAM H. HARROLD, III  
LINDA HAUSMAN  
STACY L. MONDAY



PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7195

STEVEN R. BRATKE\*\*

KINGWOOD OFFICE  
107 WEST COURT STREET  
PO BOX 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
LISA HARTLEY  
REBECCA L. ERITANO

OF COUNSEL  
JAMES E. MCNEER  
CECIL B. HIGHLAND, JR.  
(1918-2002)  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

SENIOR LEGAL ASSISTANTS  
MILDRED L. KENNEDY  
DIANA L. BEDELL

\* ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
\*\* ALSO ADMITTED TO PRACTICE IN OHIO  
\*\*\* ALSO ADMITTED TO PRACTICE IN MARYLAND  
\*\*\*\* CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
\*\*\*\*\* ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

Barry J. Nace, Esquire  
Paulson & Nace  
1814 N. Street NW  
Washington, DC 20036

January 27, 2005

Re: Barbara Ann Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Nace:

Enclosed please find a copy of an Application to Employ Special Counsel, Order and an original Affidavit with regard to your appointment as special counsel in the referenced matter. I request that you review the enclosed documentation and if the same meets with your approval, please sign the Affidavit in the presence of a Notary Public and return it to me along with a copy of your Contingency Fee Agreement. Upon receipt of the same, I will transmit the documentation to the Bankruptcy Court for approval.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Kristi M. Hook, CLA  
to Robert W. Trumble, Trustee

mh  
Enclosures

0012

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

275 AIKENS CENTER

P. O. Box 2509

MARTINSBURG, WV 25402-2509

TELEPHONE (304) 264-4621

FACSIMILE (304) 264-8623

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
MICHAEL J. NOVOTNY\*\*\*  
TIMOTHY D. HELMAN

CLARKSBURG OFFICE  
ONE VALLEY BANK BUILDING  
PO DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE: (304) 626-1100  
FACSIMILE: (304) 623-3035

C. DAVID McMUNN  
J. CECIL JARVIS  
JAMES A. VARNER\*  
JAMES N. RILEY  
DENNIS M. SHREVE  
GRALDINE S. ROBERTS  
JUDY L. SHANHOLTZ\*\*\*\*  
TIFFANY R. DURST  
MICHAEL D. CRIM\*\*\*  
HEATHER McVICKER THAYER  
DEBRA T. HERRON  
REBECCA A. DONNELLAN  
SAM H. HARROLD, III  
LINDA HAUSMAN  
STACY L. MONDAY



January 27, 2005

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATKE\*

KINGWOOD OFFICE  
107 WEST COURT STREET  
PO BOX 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
LISA HARTLEY  
REBECCA L. ERITANO

OF COUNSEL  
JAMES E. MCNEER  
CECIL B. HIGHLAND, JR  
(1918-2002)  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

SENIOR LEGAL ASSISTANTS  
MILDRED L. KENNEDY  
DIANA L. BEDELL

\* ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
\*\* ALSO ADMITTED TO PRACTICE IN OHIO  
\*\*\* ALSO ADMITTED TO PRACTICE IN MARYLAND  
\*\*\*\* CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
\*\*\*\*\* ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

D. Michael Burke, Esquire  
Burke, Schultz Harman & Jenkinson  
85 Aikens Center  
Martinsburg, WV 25401

Re: Barbara Ann Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Burke:

Enclosed please find a copy of an Application to Employ Special Counsel, Order and an original Affidavit with regard to your appointment as special counsel in the referenced matter. I request that you review the enclosed documentation and if the same meets with your approval, please sign the Affidavit in the presence of a Notary Public and return it to me along with a copy of your Contingency Fee Agreement. Upon receipt of the same, I will transmit the documentation to the Bankruptcy Court for approval.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Kristi M. Hook, CLA  
to Robert W. Trumble, Trustee

kmh  
Enclosures

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

BANKRUPTCY CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

---

TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL

COMES NOW the Trustee, Robert W. Trumble, and makes application to this Court to employ D. Michael Burke, Esquire of the law firm of Burke, Schultz, Harman and Jenkinson, and Barry J. Nace, Esquire of the law firm of Paulson & Nace, and in support thereof respectfully represents:

1. That on or about the 27<sup>th</sup> day of September, 2004, the Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code and the undersigned was subsequently appointed Interim Trustee.
2. The undersigned Trustee deems it necessary and in the best interest of this estate to employ D. Michael Burke, Esquire, and Barry J. Nace, Esquire as Trustee's legal counsel to pursue the Debtor's personal injury claim as a result of a vehicular accident, under a contingency fee arrangement with the same terms and conditions as originally entered into by the party herein and as more fully set forth in the contingency fee contract attached hereto as Exhibit "A" and incorporated herein by reference.

3. D. Michael Burke, Esquire, is an attorney with the law firm of Burke, Schultz, Harman & Jenkinson, located at 85 Aikens Center, Martinsburg, WV 25401; Barry J. Nace, Esquire is an attorney with the law firm of Paulson & Nace, located at 1814 N. Street NW,

Washington, DC 20036, and are most knowledgeable of the Debtor's claim and are well qualified to act as special counsel herein.

4. D. Michael Burke, Esquire, and Barry J. Nace, Esquire represent no interest adverse to the Estate of the Debtor herein.

5. To the best of Applicant's knowledge, D. Michael Burke, Esquire, and Barry J. Nace, Esquire have had no connection with any creditors, or any other parties in interest or their respective attorneys adverse to this estate.

6. This application is not made at the recommendation of any party and is made solely at the instance of Applicant.

7. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, Applicant respectfully prays that D. Michael Burke, Esquire, and Barry J. Nace, Esquire, be approved as special counsel for the Trustee herein, under a contingency fee agreement.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, postage prepaid, to William A. O'Brien, Esquire, 201 East John Street, Martinsburg, WV 25402; to D. Michael Burke, Esquire, Burke, Schultz, Harman & Jenkinson, 85 Aikens Center, Martinsburg, WV 25401; to Barry J. Nace, Esquire, Paulson & Nace, 1814 N. Street NW, Washington, DC 20036 and electronically mailed to the Office of the U.S. Trustee at ustpregion04.ct.ecf at usdoj.gov this 27<sup>th</sup> day of January, 2005.

/s/ Robert W. Trumble  
Robert W. Trumble, Trustee  
275 Aikens Center  
Post Office Box 2509  
Martinsburg, WV 25402-2509  
Telephone: (304) 264-4621

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

AFFIDAVIT

STATE OF \_\_\_\_\_;  
COUNTY OF \_\_\_\_\_;

I, Barry J. Nace, Esquire, declare:

1. That I am an attorney with the law firm of Paulson & Nace located at 1814 N. Street NW, Washington, DC 20036.

2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.

3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.

4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.

\_\_\_\_\_  
Barry J. Nace, Esquire

SWORN TO AND SUBSCRIBED

before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

AFFIDAVIT

STATE OF WEST VIRGINIA:

COUNTY OF \_\_\_\_\_:

I, D. Michael Burke, Esquire, declare:

1. That I am an attorney with the law firm of Burke, Schultz, Harman & Jenkinson located at 85 Aikens Center, Martinsburg, WV 25402.

2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.

3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.

4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.

D. Michael Burke, Esquire

SWORN TO AND SUBSCRIBED

before me this \_\_\_\_\_

day of \_\_\_\_\_, 2005.

Notary Public

My Commission Expires:

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

---

**ORDER AUTHORIZING TRUSTEE TO EMPLOY SPECIAL COUNSEL**

Upon the annexed application of Robert W. Trumble, Trustee of the estate of the above-named Debtor, Barbara Ann Miller, for authority to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace to serve as special counsel for the Trustee on a contingency basis in connection with the pursuit of the Debtor's personal injury claim, and it appearing that no notice need be given, no adverse interest having been represented and, the Court being satisfied that said law firm represents no interest adverse to the Trustee of the Estate of the Debtor in the matters affecting the administration of this Estate, that such employment is necessary and would be in the best interest of the Estate herein, and that the case is one justifying special counsel, it is

ORDERED, that said Trustee be, and hereby is, authorized and empowered to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace as special counsel to represent the Trustee on a contingency basis.

[END OF DOCUMENT]

D. Michael Burke  
Lawrence M. Schultz  
Ronald M. Harman  
Licensed in WV, MD & D.C.  
Mark Jenkinson  
Licensed in WV & MD

**BURKE • SCHULTZ**  
**HARMAN & JENKINSON**  
ATTORNEYS AT LAW

Of Counsel  
**Barry J. Nace**  
Licensed in D.C., MD, PA & WV

85 Aikens Center (Edwin Miller Blvd.) • P.O. Box 1938 • Martinsburg, WV 25402  
304.263.0900 • [www.burkeandschultz.com](http://www.burkeandschultz.com) • fax 304.267.0469

February 2, 2005

Robert W. Trumble, Esquire  
McNeer Highland McMunn and Varner, L.C.  
P.O. Box 2509  
Martinsburg, WV 25402

**Re: Barbara Ann Miller, Debtor**  
**Bankruptcy Case No.: 04-03365**

Dear Mr. Trumble:

Please find enclosed the completed Affidavit and a copy of my contract with Ms. Miller.

Sincerely,

*D. Michael Burke/dfw*

D. Michael Burke

DMB/dfw

Enclosure: as stated

0019

PAULSON & NACE

ATTORNEYS AT LAW

Richard S. Paulson (1929-1986)  
Barry J. Nace Cht., P.C. (DC, MD, PA, WV)\*  
\*CERTIFIED IN CIVIL TRIAL ADVOCACY  
BY THE NATIONAL BOARD OF TRIAL ADVOCACY

1814 N Street, NW  
Washington, DC 20036-2404  
Phone (202) 463-1999  
Fax (202) 223-6824  
E-mail p&n@lawtort.com  
www.paulsonandnace.com

Maryland Office  
31 Wood Lane  
Rockville, MD 20850-2228  
Phone (202) 463-1999

West Virginia Office  
1444 Edwin Miller Boulevard  
P.O. Box 1938  
Martinsburg, WV 25402  
Phone (888) 529-2628

24  
February 28, 2005

Robert W. Trumble  
McNeer, Highland, McMunn & Varner, LC  
275 Aikens Center  
P.O. Box 2509  
Martinsburg, WV 25402-2509

RE: Miller, Barbara A.

Dear Mr. Trumble:

Enclosed please find the signed Affidavit in the above captioned matter.

I understand that Mr. Burke has already sent his Affidavit to you.

I would ask you to also note that I am a member of the West Virginia bar. Also, please note that as of March 5, 2005 my office address will be changed to the following "1615 New Hampshire Avenue, NW, Washington DC, 20009."

Very truly yours,

Barry J. Nace

BJN:nc

S:\Case Files\Miller, Paul\Correspondence\Trumble 02.22.05.doc

0020

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

BANKRUPTCY CASE NO. 04-03365

DEBTOR.

TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL

COMES NOW the Trustee, Robert W. Trumble, and makes application to this Court to employ D. Michael Burke, Esquire of the law firm of Burke, Schultz, Harman and Jenkinson, and Barry J. Nace, Esquire of the law firm of Paulson & Nace, and in support thereof respectfully represents:

1. That on or about the 27<sup>th</sup> day of September, 2004, the Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code and the undersigned was subsequently appointed Interim Trustee.
2. The undersigned Trustee deems it necessary and in the best interest of this estate to employ D. Michael Burke, Esquire, and Barry J. Nace, Esquire as Trustee's legal counsel to pursue the Debtor's personal injury claim as a result of a vehicular accident, under a contingency fee arrangement with the same terms and conditions as originally entered into by the party herein and as more fully set forth in the contingency fee contract attached hereto as Exhibit "A" and incorporated herein by reference.
3. D. Michael Burke, Esquire, is an attorney with the law firm of Burke, Schultz, Harman & Jenkinson, located at 85 Aikens Center, Martinsburg, WV 25401; Barry J. Nace, Esquire is an attorney with the law firm of Paulson & Nace, located at 1814 N. Street NW,

Washington, DC 20036, and are most knowledgeable of the Debtor's claim and are well qualified to act as special counsel herein.

4. D. Michael Burke, Esquire, and Barry J. Nace, Esquire represent no interest adverse to the Estate of the Debtor herein.
5. To the best of Applicant's knowledge, D. Michael Burke, Esquire, and Barry J. Nace, Esquire have had no connection with any creditors, or any other parties in interest or their respective attorneys adverse to this estate.
6. This application is not made at the recommendation of any party and is made solely at the instance of Applicant.
7. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, Applicant respectfully prays that D. Michael Burke, Esquire, and Barry J. Nace, Esquire, be approved as special counsel for the Trustee herein, under a contingency fee agreement.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, postage prepaid, to William A. O'Brien, Esquire, 201 East John Street, Martinsburg, WV 25402; to D. Michael Burke, Esquire, Burke, Schultz, Harman & Jenkinson, 85 Aikens Center, Martinsburg, WV 25401; to Barry J. Nace, Esquire, Paulson & Nace, 1814 N. Street NW, Washington, DC 20036 and electronically mailed to the Office of the U.S. Trustee at ustpregion04.ct.ecf at usdoj.gov this 2<sup>nd</sup> day of March, 2005.



/s/ Robert W. Trumble

Robert W. Trumble, Trustee  
275 Aikens Center  
Post Office Box 2509  
Martinsburg, WV 25402-2509  
Telephone: (304) 264-4621

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

CASE NO. 04-03365

DEBTOR.

AFFIDAVIT

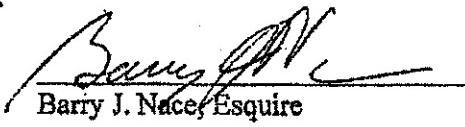
STATE OF District of Columbia  
COUNTY OF Columbia

I, Barry J. Nace, Esquire, declare:

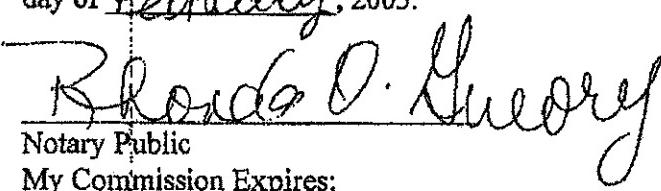
1. That I am an attorney with the law firm of Paulson & Nace located at 1814 N. Street NW, Washington, DC 20036.
2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.
3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.
4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.

  
Barry J. Nace, Esquire

SWORN TO AND SUBSCRIBED  
before me this 21<sup>st</sup>  
day of February, 2005.

  
Rhonda O. Gueory  
Notary Public  
My Commission Expires:

RHONDA OLEAN GUEORY  
Notary Public, District of Columbia  
My Commission Expires May 31, 2006

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

CASE NO. 04-03365

DEBTOR.

AFFIDAVIT

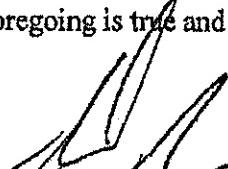
STATE OF WEST VIRGINIA:  
COUNTY OF Berkeley:

I, D. Michael Burke, Esquire, declare:

1. That I am an attorney with the law firm of Burke, Schultz, Harman & Jenkinson located at 85 Aikens Center, Martinsburg, WV 25402.
2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.
3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.
4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.



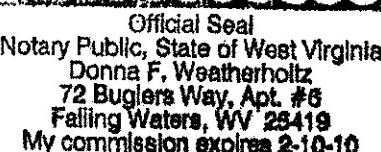
D. Michael Burke, Esquire

SWORN TO AND SUBSCRIBED

before me this 1  
day of February, 2005.

Donna F. Weatherholt  
Notary Public

My Commission Expires: 2/10/10



CONTRACT OF EMPLOYMENT AND AUTHORITY TO REPRESENT

I, Barbara Miller, adm'ry of the Estate of Van D. H. /12a, do hereby retain and employ D. Michael Burke as my attorney to represent me in my claim against Dr. Carrier or whoever is liable for my injuries or damages resulting from an accident or incident which occurred on or about 3-19-03 at PHI in Martinsburg.

As compensation for his services, I hereby agree to pay D. Michael Burke from the proceeds of recovery the following fee:

- Thirty-three and one-third percent (33-1/3%) if the case is resolved at any time prior to trial, and forty percent (40%) of all sums collected if the case results in trial. (Negligence cases)
- Forty percent (40%) of all sums collected (Medical Malpractice cases and Product Liability cases).

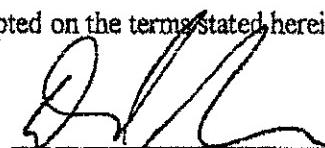
It is understood and agreed that this employment is upon a contingent basis and if no recovery is made I will not be indebted to any attorney for any sum whatsoever for the attorney's fee as long as this contract is in effect. I also understand that I am responsible for out-of-pocket expenses incurred by my attorney in the prosecution of my claim and I authorize my attorney to deduct from the proceeds of my recovery the out-of-pocket expenses he has incurred.

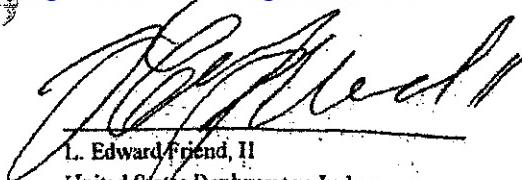
My attorney is authorized to deduct from the proceeds of any recovery the amount of any unpaid medical or hospital expenses incurred as a result of the claim in question and remit the same directly to the hospital and/or doctors involved.

Dated at Martinsburg, West Virginia, on this the 5th day of Feb 2004.

Barbara A. Miller  
NAME

The above employment is hereby accepted on the terms stated herein.

  
D. Michael Burke



L. Edward Friend, II  
United States Bankruptcy Judge  
Dated: Friday, March 03, 2006 11:02:39 AM

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

CASE NO. 04-03365

DEBTOR.

**ORDER AUTHORIZING TRUSTEE TO EMPLOY SPECIAL COUNSEL**

Upon the annexed application of Robert W. Trumble, Trustee of the estate of the above-named Debtor, Barbara Ann Miller, for authority to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace to serve as special counsel for the Trustee on a contingency basis in connection with the pursuit of the Debtor's personal injury claim, and it appearing that no notice need be given, no adverse interest having been represented and, the Court being satisfied that said law firm represents no interest adverse to the Trustee of the Estate of the Debtor in the matters affecting the administration of this Estate, that such employment is necessary and would be in the best interest of the Estate herein, and that the case is one justifying special counsel, it is

ORDERED, that said Trustee be, and hereby is, authorized and empowered to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace as special counsel to represent the Trustee on a contingency basis.

[END OF DOCUMENT]

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
MICHAEL J. NOVOTNY\*\*\*  
TIMOTHY D. HELMAN

275 AIKENS CENTER  
P. O. Box 2509  
MARTINSBURG, WV 25402-2509  
TELEPHONE (304) 264-4621  
FACSIMILE (304) 264-8623

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. Box 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

CLARKSBURG OFFICE  
BB&T BANK BUILDING  
P.O. DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE: (304) 626-1100  
FACSIMILE: (304) 623-3035

C. DAVID McMUNN  
J. CECIL JARVIS  
JAMES A. VARNER\*  
JAMES N. RILEY  
DENNIS M. SHREVE  
GERALDINE S. ROBERTS  
JUDY L. SHANHOLTZ\*\*\*\*  
TIFFANY R. DURST  
MICHAEL D. CRIM\*\*\*\*\*  
HEATHER D. MCVICKER THAYER  
DEBRA HERRON  
REBECCA DONNELAN  
SAM H. HARROLD, III  
LINDA HAUSMAN  
STACY MONDAY  
DANA N. BONNELL  
ANDREW N. FRYE, III

\* ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
\*\* ALSO ADMITTED TO PRACTICE IN OHIO  
\*\*\* ALSO ADMITTED TO PRACTICE IN MARYLAND  
\*\*\*\* CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
\*\*\*\*\* ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA



FILE COPY

May 18, 2005

STEVEN R. BRATKE\*\*  
HEATHER STARCHER

KINGWOOD OFFICE  
107 WEST COURT STREET  
P.O. Box 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
LISA HARTLEY

OF COUNSEL  
JAMES E. MCNEER  
CECIL B. HIGHLAND, JR.  
(1918 - 2002)  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

SENIOR LEGAL ASSISTANTS  
MILDRED-L. KENNEDY  
DIANA L. BEDELL

D. Michael Burke, Esquire  
Burke Schultz Harman & Jenkinson  
85 Aikens Center  
P.O. Box 1938  
Martinsburg, WV 25402

Re: Barbara Miller, Debtor(s)  
Bankruptcy Case No.: 04-3365

Dear Mr. Burke:

Please provide to me a written report concerning the status of the Debtor(s) medical malpractice claim which is an asset of this Bankruptcy Estate. To facilitate the Trustee's reporting requirements, I respectfully request that said report be provided to me on or before June 15, 2005.

Thank you for your prompt attention to this matter, I am

Very truly yours,

Kristi M. Hook, CLA  
to Robert W. Trumble, Trustee

/kmh/klt  
Enclosure(s)

0027

D. Michael Burke  
Lawrence M. Schultz  
**Ronald M. Harman**  
Licensed in WV, MD & D.C.  
**Mark Jenkinson**  
Licensed in WV & MD

**BURKE • SCHULTZ**  
**HARMAN & JENKINSON**  
ATTORNEYS AT LAW

Of Counsel  
**Barry J. Nace**  
Licensed in D.C., MD, PA & WV

85 Aikens Center (Edwin Miller Blvd.) • P.O. Box 1938 • Martinsburg, WV 25402  
**304.263.0900 • www.burkeandschultz.com • fax 304.267.0469**

May 24, 2005

Kristi M. Hook, CLA  
to Robert W. Trumble, Trustee  
McNeer, Highland, McMunn and Varner, L.C.  
P.O. Box 2509  
Martinsburg, WV 25402-2509

**Re: Barbara Miller  
Bankruptcy Case No.: 04-3365**

Dear Ms. Hook:

Please be advised that my co-counsel has notified the various potential defendants that our expert has determined that were at fault in causing Mr. Miller's death.

We are awaiting responses to our assertions.

By the way, this case can be expected to take several years to complete.

Should you have any questions, please call.

Sincerely,

*D. Michael Burke*

D. Michael Burke

DM/lbg

McBURKE, HIGHLAND, McMUNN AND VARNER, L.L.C.

CLARKSBURG ATTORNEYS  
C. DAVID McMUNN  
J. CECIL JARMS  
JAMES A. VARNER\*  
JAMES N. RILEY  
DENNIS M. SHREVE  
GERALDINE S. ROBERTS  
TIFFANY R. DURST  
MICHAEL D. CRIM\*\*\*\*  
DEBRA T. HERRON\*  
JUDY L. SHANNOLITZ\*\*\*  
REBECCA L. DONNELIAN-POMEROY  
SAM H. HARROLD, III  
LINDA HAUSMAN  
STACY MONDAY-SOUTHERN  
NATALIE A. GIVAN

275 AIKENS CENTER  
P. O. Box 2509  
MARTINSBURG, WV 25402-2509  
TELEPHONE (304) 264-4621  
FACSIMILE (304) 264-8623

WRITER'S DIRECT TELEPHONE  
(304) 264-4621 x15



WRITER'S E-MAIL ADDRESS  
RWTRUMBLE@WVLAWYERS.COM

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
SUZANNE M. WILLIAMS-MCAULIFFE\*\*\*\*  
ASHLEY R. SHREVE  
MELINDA C. DUQAS

OTHER LOCATIONS

CLARKSBURG OFFICE  
400 WEST MAIN STREET, FOURTH FLOOR  
P. O. DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE (304) 625-1100  
FACSIMILE (304) 623-3035

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATTON\*\*

KINGWOOD OFFICE  
107 WEST COURT STREET  
P. O. BOX 565  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
MARK E. GAYDOS  
WOODROW E. TURNER

July 27, 2007

D. Michael Burke, Esquire  
Burke, Schultz, Harman & Jenkinson  
85 Aikens Center  
Post Office Box 1938  
Martinsburg, West Virginia 25402

Re: Barbara Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Burke:

Please provide to me a written report concerning the status of the Debtor's medical malpractice claim which is an asset of this Bankruptcy Estate. The last report I received from you was on May 24, 2005, a copy of which is attached hereto. To facilitate my reporting requirements, I respectfully request that said report be provided to me on or before August 17, 2007.

Thank you for your prompt attention to this matter, I am

Very truly yours,

Robert W. Trumble, Trustee

/kmh  
xc: William A. O'Brien, Esquire

0029



## MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

**FILE COPY**

**MARTINSBURG ATTORNEYS**  
 DAVID MC MUNN  
 ES A. VARNER, SR.  
 JAMES N. RILEY  
 DENNIS M. SHREVE  
 GERALDINE S. ROBERTS  
 MICHAEL D. CRIM  
 DEBRA TEDESCHI HERRON  
 JUDY L. SHANHOLTZ  
 SAM H. HARROLD, III  
 LINDA HAUSMAN  
 NATALIE A. GIVAN  
 JEFFREY D. VAN VOLKENBURG

Of COUNSEL  
 WILLIAM L. FURY  
 CATHERINE D. MUNSTER

JAMES E. MCNEER  
 (1924 - 2006)  
 CECIL B. HIGHLAND, JR.  
 (1918 - 2002)  
 J. CECIL JARVIS  
 (1949 - 2007)

**SENIOR LEGAL ASSISTANTS**  
 MILLIE L. KENNEDY  
 DIANA L. BEDELL

275 AIKENS CENTER  
 P. O. Box 2509  
 MARTINSBURG, WV 25402-2509  
 TELEPHONE (304) 264-4621  
 FACSIMILE (304) 264-8623

WRITER'S DIRECT TELEPHONE  
 (304) 264-4621 x15



WRITER'S E-MAIL ADDRESS  
 RWTRUMBLE@WVLAWYERS.COM

**MARTINSBURG ATTORNEYS**  
 ROBERT W. TRUMBLE  
 SUZANNE M. WILLIAMS-MCALIFFE<sup>1,2</sup>  
 MEUNDA C. DUOAS

**OTHER LOCATIONS**

**CLARKSBURG OFFICE**  
 400 WEST MAIN STREET, FOURTH FLOOR  
 P. O. DRAWER 2040  
 CLARKSBURG, WV 26302-2040  
 TELEPHONE (304) 626-1100  
 FACSIMILE (304) 623-3035

**PARKERSBURG OFFICE**  
 404 MARKET STREET, SUITE 204  
 P. O. Box 1507  
 PARKERSBURG, WV 26102  
 TELEPHONE (304) 422-7193  
 FACSIMILE (304) 422-7196

STEVEN R. BRATKE<sup>3</sup>  
 LORA B. SNODGRASS

**KINGWOOD OFFICE**  
 107 WEST COURT STREET  
 P. O. Box 585  
 KINGWOOD, WV 26537  
 TELEPHONE (304) 329-0773  
 FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
 MARIE GAYDOS  
 WOODROW E. TURNER<sup>4</sup>

**ELKINS OFFICE**  
 ONE RANDOLPH AVENUE  
 P. O. Box 1909  
 ELKINS, WV 26241-1909  
 TELEPHONE: (304) 636-3553  
 FACSIMILE: (304) 636-3607

STEPHEN G. JORY  
 HARRY A. SMITH, III<sup>5</sup>  
 MICHAEL W. PARKER

October 10, 2008

- <sup>1</sup> REGISTERED NURSE IN WEST VIRGINIA
- <sup>2</sup> ALSO ADMITTED TO PRACTICE IN OHIO
- <sup>3</sup> ALSO ADMITTED TO PRACTICE IN NEW MEXICO
- <sup>4</sup> ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA
- <sup>5</sup> CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA
- <sup>6</sup> ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

D. Michael Burke, Esquire  
 Burke, Schultz, Harman & Jenkinson  
 85 Aikens Center  
 Post Office Box 1938  
 Martinsburg, West Virginia 25402

Barry J. Nace, Esquire  
 Paulson & Nace  
 1814 North Street, NW  
 Washington, DC 20036

Re: Barbara Miller, Debtor  
 Bankruptcy Case No.: 04-03365

Dear Mr. Burke and Mr. Nace:

As you are both aware, the undersigned is the Chapter 7 Bankruptcy Trustee appointed to administer the Chapter 7 Bankruptcy Estate of Barbara Miller, which matter is pending in the United States Bankruptcy Court for the Northern District of West Virginia. On March 4, 2005, the two of you were employed as Special Counsel representing the Bankruptcy Estate of Barbara Miller. A copy of the Court Order is attached hereto for your file.

Recently, I contacted your office's to obtain a status of the case to assist in my reporting, only to find that the case was resolved and that all of the proceeds were turned over to the Debtor, Barbara Miller. I was not contacted by either of you to obtain my authority as to the settlement of this matter, nor did I receive any documentation relating to the settlement, or any of the settlement proceeds. Accordingly, I respectfully request that you turnover to me copies of the settlement documents, including, but not limited to, the Settlement Statement, Releases,

0030



October 8, 2008

D. Michael Burke, Esquire  
Barry J. Nace, Esquire

Page - 2

Dismissal Order, Fees and Expense Statements and checks representing the disbursement of the settlement proceeds to all parties. If the settlement proceeds exceeded the Debtor's allowable exemption, I will have no other alternative but to seek recovery of the Estate's portion of the proceeds, from the Debtor and any other necessary parties.

I respectfully request that you provide me with the requested information and documentation within the next five (5) business days. A copy of this letter is being forwarded to the Debtor, Barbara Miller and her bankruptcy counsel, William A. O'Brien, Esquire.

Thank you in advance for your cooperation.

Very truly yours,



Robert W. Trumble, Trustee

/kmh

Enclosure(s)

xc: Barbara Miller (w/encls.)  
William A. O'Brien, Esquire (w/encls.)

0031

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

CLARKSBURG ATTORNEYS  
C. DAVID MCNEER  
JAMES A. VARNER, SR.<sup>1</sup>  
JAMES N. RILEY  
DENNIS M. SHREVE  
GERALDINE S. ROBERTS  
MICHAEL D. CRIM  
DEBRA TEBESCHI HERRON<sup>2</sup>  
JUDY L. SHANHOLTZ<sup>3</sup>  
SAM H. HARROLD, III  
LINDA HAUSHAN  
NATALIE A. GIVAN  
JEFFREY D. VAN VOLKENBURG

Or COUNSEL  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

JAMES E. MCNEER  
(1924 - 2008)  
CECIL B. HIGHLAND, JR.  
(1918 - 2002)  
J. CECIL JARVIS  
(1949 - 2007)

SENIOR LEGAL ASSISTANTS  
MILLIE L. KENNEDY  
DIANA L. BEDELL

275 AIKENS CENTER  
P. O. Box 2509  
MARTINSBURG, WV 25402-2509  
TELEPHONE (304) 264-4621  
FACSIMILE (304) 264-8623

WRITER'S DIRECT TELEPHONE  
(304) 264-4621 x15



WRITER'S E-MAIL ADDRESS  
RWTRUMBLE@WVLAWYERS.COM

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
SUZANNE M. WILLIAMS-MCALIFFE<sup>1,2</sup>  
MELINDA C. DUQAS

OTHER LOCATIONS

CLARKSBURG OFFICE  
400 WEST MAIN STREET, FOURTH FLOOR  
P.O. DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE (304) 262-1100  
FACSIMILE (304) 262-3035

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATKE<sup>2</sup>  
LORA B. SNODGRASS

KINGWOOD OFFICE  
107 WEST COURT STREET  
P.O. BOX 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
MARK E. GAYDOS  
WOODROW E. TURNER<sup>4</sup>

ELKIN OFFICE  
ONE RANDOLPH AVENUE  
P. O. BOX 1909  
ELKIN, WV 26241-1909  
TELEPHONE: (304) 636-3553  
FACSIMILE: (304) 636-3620

STEPHEN G. JORY  
HARRY A. SMITH, III<sup>5</sup>  
MICHAEL W. PARKER

November 14, 2008

1 REGISTERED NURSE IN WEST VIRGINIA  
2 ALSO ADMITTED TO PRACTICE IN OHIO  
3 ALSO ADMITTED TO PRACTICE IN NEW MEXICO  
4 ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
5 CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
6 ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

D. Michael Burke, Esquire  
Burke, Schultz, Harman & Jenkinson  
85 Aikens Center  
Post Office Box 1938  
Martinsburg, West Virginia 25402

Barry J. Nace, Esquire  
Paulson & Nace  
1615 New Hampshire Avenue, NW  
Washington, DC 20009-2520

Re: Barbara Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Burke and Mr. Nace:

This is a **SECOND REQUEST** for documentation and/or information which I originally requested in my letter dated October 10, 2008. A copy of said letter is attached hereto. Please respond to this request on or before November 21, 2008.

Your cooperation in this regard is greatly appreciated.

Very truly yours,

Robert W. Trumble, Trustee

/kmh  
Enclosure(s)

XC: William A. O'Brien, Esquire (w/encls.)

0032

MCNEER, HIGHLAND, McMUNN AND VARNER, L.C.

275 AIKENS CENTER

P. O. Box 2509

MARTINSBURG, WV 25402-2509

TELEPHONE (304) 264-4621

FACSIMILE (304) 264-8623

CLARKSBURG ATTORNEYS

C. DAVID MCMLNN<sup>1</sup>

JAMES A. VARNER, SR.<sup>2</sup>

JAMES N. RILEY

DENNIS M. SHREVE

GERALDINE S. ROBERTS

MICHAEL D. CRIM<sup>3</sup>

DEBRA TADESCHI HERRON<sup>4</sup>

JUDY L. SHANNOLI<sup>5</sup>

SAM H. HARROLD, III

LINDA HAUSMAN

NATALIE A. GIVAN

JEFFREY D. VAN VOLKENBURG

OF COUNSEL

WILLIAM L. FURY

CATHERINE D. MUNSTER

JAMES E. MCNEER

(1924 - 2006)

CECIL B. HIGHLAND, JR.

(1916 - 2002)

J. CECIL JARVIS

(1949 - 2007)

SENIOR LEGAL ASSISTANTS

MILIE L. KENNEDY

DIANA L. BEDELL

WRITER'S DIRECT TELEPHONE  
(304) 264-4621 x15

WRITER'S E-MAIL ADDRESS  
RWTRUMBLE@WVLAWYERS.COM



MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
SUZANNE M. WILLIAMS-MCAULIFFE<sup>1,3</sup>  
MELINDA C. DUOAS

OTHER LOCATIONS

CLARKSBURG OFFICE  
400 WEST MAIN STREET, FOURTH FLOOR  
P. O. DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE (304) 626-1100  
FACSIMILE (304) 623-3035

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. BOX 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATKE<sup>2</sup>  
LORA B. SHODGRASS

KINWOOD OFFICE  
107 WEST COURT STREET  
P.O. BOX 585  
KINWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
MARIE E. GAYDOS  
WOODROW E. TURNER<sup>4</sup>

ELKINS OFFICE  
ONE RANDOLPH AVENUE  
P. O. BOX 1909  
ELKINS, WV 26241-1909  
TELEPHONE: (304) 626-3553  
FACSIMILE: (304) 626-3607

STEPHEN G. JORY  
HARRY A. SMITH, III<sup>2</sup>  
MICHAEL W. PARKER

November 14, 2008

- 1 REGISTERED NURSE IN WEST VIRGINIA
- 2 ALSO ADMITTED TO PRACTICE IN OHIO
- 3 ALSO ADMITTED TO PRACTICE IN NEW MEXICO
- 4 ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA
- 5 CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA
- 6 ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

D. Michael Burke, Esquire  
Burke, Schultz, Harman & Jenkinson  
85 Aikens Center  
Post Office Box 1938  
Martinsburg, West Virginia 25402

Barry J. Nace, Esquire  
Paulson & Nace  
1615 New Hampshire Avenue, NW  
Washington, DC 20009-2520

Re: Barbara Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Burke and Mr. Nace:

This is a **SECOND REQUEST** for documentation and/or information which I originally requested in my letter dated October 10, 2008. A copy of said letter is attached hereto. Please respond to this request on or before November 21, 2008.

Your cooperation in this regard is greatly appreciated.

Very truly yours,

Robert W. Trumble, Trustee

/kmh  
Enclosure(s)

xc: William A. O'Brien, Esquire (w/encls.)

0033

PAULSON & NACE  
ATTORNEYS AT LAW

Richard S. Paulson (1929-1986)  
Christopher J. Nace (DC, MD, PA, WV)  
CERTIFIED IN CIVIL TRIAL ADVOCACY  
BY THE NATIONAL BOARD OF TRIAL ADVOCACY  
CERTIFIED IN MEDICAL MALPRACTICE  
BY THE AMERICAN BOARD OF PROFESSIONAL  
LIABILITY ATTORNEYS

1615 New Hampshire Avenue, NW  
Washington, DC 20009-2520  
Phone (202) 463-1999  
Fax (202) 223-6824  
[www.paulsonandnace.com](http://www.paulsonandnace.com)

Christopher T. Nace (DC, MD, GA)  
Jonathan B. Nace (MD)

December 1, 2008

Via U.S. Mail

Robert W. Trumble, Trustee  
McNeer, Highland, McMunn & Varner, LC  
275 Aikens Center  
P.O. Box 2509  
Martinsburg, WV 25402-2509

RE: Miller, Barbara A.

Dear Mr. Trumble:

In response to your letter of November 14, 2008, entitled "SECOND REQUEST", this is to advise you that I did not get a "FIRST REQUEST". You attached a letter of October 10, 2008, which I did not receive, perhaps that is because you have the wrong address on your October 10, 2008 letter, which you attached to the November 14, 2008 letter, which you can see simply by looking at the November 14, 2008 letter. Your letter of November 14, 2008 arrived when I was in trial in front of Judge Silver in Martinsburg, which trial ended on Tuesday, November 25, 2008.

Moreover, as I look at the October 10 letter, there was nothing attached. Please send the attachments.

Further, looking at your October 10 letter you stated that you had contacted my office to obtain a status of the case. Someone called me several months ago on the telephone and I talked to them and it may have been you. I told that person, whether it was you or someone else, that there was not any settlement and that the case was tried to jury verdict and then went on appeal and reported by the Court of Appeals when they declined to accept the defendants' petition. I am not sure why you would expect us to contact you to obtain authority as to a settlement since there was no settlement.

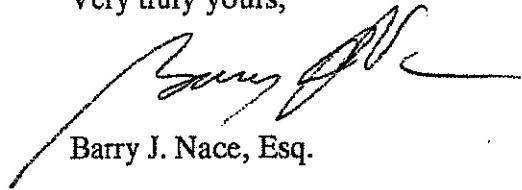
I will attempt to collect the information you want, but I would ask also that you send me whatever documentation supporting your statements made in your letter of October 10, 2008 and which gives you the authority to make the request that you made.

0034

Robert W. Trumble, Trustee  
December 1, 2008  
Page 2 of 2

Also, please advise as to the "debtors allowable exemption". Thank you.

Very truly yours,

  
Barry J. Nace, Esq.

BJN/bcb

MCNEER, HIGHLAND, MCMUNN AND VARNER, L.C.

**FILE COPY**

275 AIKENS CENTER

P. O. Box 2509

MARTINSBURG, WV 25402-2509

TELEPHONE (304) 264-4621

FACSIMILE (304) 264-8623



WRITER'S DIRECT TELEPHONE  
(304) 264-4621 x2015

WRITER'S E-MAIL ADDRESS  
RWTRUMBLE@WVLAWYERS.COM

CLARKSBURG ATTORNEYS  
C. DAVID MC MUNN  
JAMES A. VARNER, SR.  
JAMES N. RILEY  
DENNIS M. SHREVE  
RALDINE S. ROBERTS  
MICHAEL D. CRIM  
DEBRA TETERCHI HERRON  
JUDY L. SHANHOLTZ  
SAM H. HARROLD, III  
LINDA HALSHMAN  
NATALIE A. GIVAN  
JEFFREY D. VAN VOLKENBURG  
RICHARD R. MARSH  
ALLISON S. MCCLURE

OF COUNSEL  
WILLIAM L. FURY  
CATHERINE D. MUNSTER

JAMES E. MCNEER  
(1924 - 2006)  
CECIL B. HIGHLAND, JR.  
(1918 - 2002)  
J. CECIL JARVIS  
(1949 - 2007)

SENIOR LEGAL ASSISTANTS  
MILLIE L. KENNEDY  
DIANA L. BEDELL

1 REGISTERED NURSE IN WEST VIRGINIA  
2 ALSO ADMITTED TO PRACTICE IN OHIO  
3 ALSO ADMITTED TO PRACTICE IN NEW MEXICO  
4 ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA  
5 CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA  
6 ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

MARTINSBURG ATTORNEYS  
ROBERT W. TRUMBLE  
SUZANNE M. WILLIAMS-MCAULIFFE  
MELINDA C. DUGAS  
JONATHAN L. WERTMAN

OTHER LOCATIONS

CLARKSBURG OFFICE  
400 WEST MAIN STREET  
P. O. DRAWER 2040  
CLARKSBURG, WV 26302-2040  
TELEPHONE (304) 626-1100  
FACSIMILE (304) 623-3035

PARKERSBURG OFFICE  
404 MARKET STREET, SUITE 204  
P. O. Box 1507  
PARKERSBURG, WV 26102  
TELEPHONE (304) 422-7193  
FACSIMILE (304) 422-7196

STEVEN R. BRATKE  
LORA B. SHODGRASS

KINGWOOD OFFICE  
107 WEST COURT STREET  
P.O. Box 585  
KINGWOOD, WV 26537  
TELEPHONE (304) 329-0773  
FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
MARK E. GAYDOS  
WOODROW E. TURNER\*

ELKINS OFFICE  
ONE RANDOLPH AVENUE  
P. O. Box 1909  
ELKINS, WV 26241-1909  
TELEPHONE: (304) 636-3553  
FACSIMILE: (304) 636-3607

STEPHEN G. JORY  
HARRY A. SMITH, III\*  
MICHAEL W. PARKER

January 5, 2009

Barry J. Nace, Esquire  
Paulson & Nace  
1615 New Hampshire Avenue, NW  
Washington, DC 20009-2520

Re: Barbara A. Miller, Debtor  
Bankruptcy Case No.: 04-03365

Dear Mr. Nace:

Thank you for your letter of December 1, 2008. I regret that you did not receive my letter of October 10, 2008. For your convenience, enclosed is a copy of the October 10, 2008 letter, together with the attachments.

By virtue of the Order Authorizing Trustee to Employ Special Counsel entered by the United States Bankruptcy Court for the Northern District of West Virginia on March 4, 2005, a copy of which is attached hereto, the Application I filed to employ you on behalf of the Estate to represent the Estate's interest in this civil action was approved by the Court. A copy of the Trustee's Application to Employ Special Counsel is attached for your review. Accordingly, you represented the Trustee to represent my interest with regard to this civil action. Whether it be settled, tried to a jury, or resolved on appeal is irrelevant. You were employed by me as Trustee to represent the Trustee's interest with regard to this matter. Accordingly, as the Trustee of the Bankruptcy Estate and your client, I should have been informed as to the ultimate disposition of this matter and should have received the proceeds from the recovery on the judgment which you obtained.

As to the Debtor's allowable exemption, her bankruptcy petition and schedules reflect an available exemption of \$25,768.00, pursuant to West Virginia Code

January 5, 2009

Barry J. Nace, Esquire

Paulson & Nace

Page - 2

§ 38-10-4(a) and (e). After the payment of your fees and expenses, the net proceeds recovered on the judgment should have been paid to me as Trustee for the Bankruptcy Estate. I would have then, in turn, distributed to Ms. Miller her exemptible interest in the proceeds and used the balance of the funds to pay the creditors of her Bankruptcy Estate.

Your actions have violated your duty to me as your client. I strongly recommend that you place your malpractice carrier on notice regarding your breach. Furthermore, I will be contacting the appropriate State Bars in which you are admitted to report your disregard for the Rules of Professional Conduct as it relates to the representation of me as the Trustee with regard to this matter.

Sincerely,

  
Robert W. Trumble  
*by kmh*

Robert W. Trumble, Esquire

/kmh

xc: Michael D. Burke, Esquire (w/encls.)

McNEER, HIGHLAND, McMUNN AND VANDER, L.C.

**FILE COPY**

**CLARKSBURG ATTORNEYS**  
 C. DAVID McMUNN  
 JAMES A. VARNER, SR.  
 JAMES H. RILEY  
 DENNIS M. SHEREVE  
 GERALDINE S. ROBERTS  
 MICHAEL D. CRIM<sup>1</sup>  
 DEBRA TEDESCCHI HERRON<sup>2</sup>  
 JUSTY L. SHANHOLTZ<sup>3</sup>  
 SAM H. HARROLD, III  
 LINDA HAUSMAN  
 NATALIE A. GIVAN  
 JEFFREY D. VAN VOLKENBURG

**OF COUNSEL**  
 WILLIAM L. FURY  
 CATHERINE D. MUNSTER

JAMES E. MCNEER  
 (1924 - 2006)  
 CECIL B. HIGHLAND, JR.  
 (1918 - 2002)  
 J. CECIL JARVIS  
 (1949 - 2007)

**SENIOR LEGAL ASSISTANTS**  
 MILLIE L. KENNEDY  
 DIANA L. BEDELL

275 AIKENS CENTER  
 P. O. Box 2509  
 MARTINSBURG, WV 25402-2509  
 TELEPHONE (304) 264-4621  
 FACSIMILE (304) 264-8623



**WRITER'S DIRECT TELEPHONE**  
 (304) 264-4621 x15

**WRITER'S E-MAIL ADDRESS**  
 RWTRUMBLE@WVLAWYERS.COM

**MARTINSBURG ATTORNEYS**  
 ROBERT W. TRUMBLE  
 SUZANNE M. WILLIAMS-MCAULIFFE<sup>4</sup>  
 MELINDA C. DUJAS

**OTHER LOCATIONS**

**CLARKSBURG OFFICE**  
 400 WEST MAIN STREET, FOURTH FLOOR  
 P. O. DRAWER 2040  
 CLARKSBURG, WV 26302-2040  
 TELEPHONE (304) 626-1103  
 FACSIMILE (304) 626-3035

**PARKERSBURG OFFICE**  
 404 MARKET STREET, SUITE 204  
 P. O. Box 507  
 PARKERSBURG, WV 26102  
 TELEPHONE (304) 422-7193  
 FACSIMILE (304) 422-7198

STEVEN R. BRATKE<sup>5</sup>  
 LORA B. SNODGRASS

**KINGWOOD OFFICE**  
 107 WEST COURT STREET  
 P.O. Box 585  
 KINGWOOD, WV 26537  
 TELEPHONE (304) 329-0773  
 FACSIMILE (304) 329-0595

JAMES T. DAILEY, JR.  
 MARIE E. GAYDOS  
 WOODROW E. TURNER<sup>6</sup>

**ELKINS OFFICE**  
 ONE RANDOLPH AVENUE  
 P. O. Box 1909  
 ELKINS, WV 26241-1909  
 TELEPHONE (304) 636-3553  
 FACSIMILE (304) 636-3807

STEPHEN G. JORY  
 HARRY A. SMITH, III  
 MICHAEL W. PARKER

October 10, 2008

- <sup>1</sup> REGISTERED NURSE IN WEST VIRGINIA
- <sup>2</sup> ALSO ADMITTED TO PRACTICE IN OHIO
- <sup>3</sup> ALSO ADMITTED TO PRACTICE IN NEW MEXICO
- <sup>4</sup> ALSO ADMITTED TO PRACTICE IN PENNSYLVANIA
- <sup>5</sup> CERTIFIED PUBLIC ACCOUNTANT IN WEST VIRGINIA
- <sup>6</sup> ALSO ADMITTED TO PRACTICE IN NORTH CAROLINA

D. Michael Burke, Esquire  
 Burke, Schultz, Harman & Jenkinson  
 85 Aikens Center  
 Post Office Box 1938  
 Martinsburg, West Virginia 25402

Barry J. Nace, Esquire  
 Paulson & Nace  
 1814 North Street, NW  
 Washington, DC 20036

Re: Barbara Miller, Debtor  
 Bankruptcy Case No.: 04-03365

Dear Mr. Burke and Mr. Nace:

As you are both aware, the undersigned is the Chapter 7 Bankruptcy Trustee appointed to administer the Chapter 7 Bankruptcy Estate of Barbara Miller, which matter is pending in the United States Bankruptcy Court for the Northern District of West Virginia. On March 4, 2005, the two of you were employed as Special Counsel representing the Bankruptcy Estate of Barbara Miller. A copy of the Court Order is attached hereto for your file.

Recently, I contacted your office's to obtain a status of the case to assist in my reporting, only to find that the case was resolved and that all of the proceeds were turned over to the Debtor, Barbara Miller. I was not contacted by either of you to obtain my authority as to the settlement of this matter, nor did I receive any documentation relating to the settlement, or any of the settlement proceeds. Accordingly, I respectfully request that you turnover to me copies of the settlement documents, including, but not limited to, the Settlement Statement, Releases,

0038

October 8, 2008  
D. Michael Burke, Esquire  
Barry J. Nace, Esquire

Page - 2

Dismissal Order, Fees and Expense Statements and checks representing the disbursement of the settlement proceeds to all parties. If the settlement proceeds exceeded the Debtor's allowable exemption, I will have no other alternative but to seek recovery of the Estate's portion of the proceeds, from the Debtor and any other necessary parties.

I respectfully request that you provide me with the requested information and documentation within the next five (5) business days. A copy of this letter is being forwarded to the Debtor, Barbara Miller and her bankruptcy counsel, William A. O'Brien, Esquire.

Thank you in advance for your cooperation.

Very truly yours,



Robert W. Trumble, Trustee

/kmh  
Enclosure(s)

xc: Barbara Miller (w/encls.)  
William A. O'Brien, Esquire (w/encls.)

*L. Edward Friend, II*  
L. Edward Friend, II  
United States Bankruptcy Judge  
Dated: Friday, March 04, 2005 11:02:39 AM

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

CASE NO. 04-03365

DEBTOR.

**ORDER AUTHORIZING TRUSTEE TO EMPLOY SPECIAL COUNSEL.**

Upon the annexed application of Robert W. Trumble, Trustee of the estate of the above-named Debtor, Barbara Ann Miller, for authority to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace to serve as special counsel for the Trustee on a contingency basis in connection with the pursuit of the Debtor's personal injury claim, and it appearing that no notice need be given, no adverse interest having been represented and, the Court being satisfied that said law firm represents no interest adverse to the Trustee of the Estate of the Debtor in the matters affecting the administration of this Estate, that such employment is necessary and would be in the best interest of the Estate herein, and that the case is one justifying special counsel, it is

ORDERED, that said Trustee be, and hereby is, authorized and empowered to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace as special counsel to represent the Trustee on a contingency basis.

[END OF DOCUMENT]

**File a Motion:**

3:04-bk-03365 Barbara Ann Miller

**U.S. Bankruptcy Court**

**Northern District of West Virginia**

**Notice of Electronic Filing**

The following transaction was received from Trumble, Robert W. entered on 3/3/2005 at 2:10 PM EST and filed on 3/3/2005

**Case Name:** Barbara Ann Miller

**Case Number:** 3:04-bk-03365

**Document Number:** 10

**Docket Text:**

Application to Employ D. Michael Burk, Esquire and Barry J. Nace, Esquire as Special Counsel with Certificate of Service. Filed by Robert W. Trumble on behalf of Robert W. Trumble. (Attachments: # (1) Proposed Order Authorizing Trustee to Employ Special Counsel) (Trumble, Robert)

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** F:\BMSW\QUIKDOCS\04-03365\app to employ special counsel.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=988911880 [Date=3/3/2005] [FileNumber=631582-0] [3dadbe40376f327ef705d90cc8f15fb8e96ce60a27d926b1166d47d7e241882503e3ddfc9e30bb58e863d8d2adfb758535f9b6491c8570cd192321e0c06c216]]

**Document description:** Proposed Order Authorizing Trustee to Employ Special Counsel

**Original filename:** F:\BMSW\QUIKDOCS\04-03365\Order to employ special counsel.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=988911880 [Date=3/3/2005] [FileNumber=631582-1] [473c8c244ccf53ccb9b74458259ee7fe762b1c65a4e05cef82de45a1b8d634ce0e4baed737f2af71e64f2a8e77d90890c53bb544ea23c0e0959f0b7276c32ecd]]

**3:04-bk-03365 Notice will be electronically mailed to:**

William A. O'Brien wob3@earthlink.net, wob4@earthlink.net

Robert W. Trumble trumbletr@aol.com, kristiassist@aol.com; WV06@ecfcbis.com

United States Trustee ustpregion04.ct.ecf@usdoj.gov

**3:04-bk-03365 Notice will not be electronically mailed to:**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

BANKRUPTCY CASE NO. 04-03365

DEBTOR.

TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL

COMES NOW the Trustee, Robert W. Trumble, and makes application to this Court to employ D. Michael Burke, Esquire of the law firm of Burke, Schultz, Harman and Jenkinson, and Barry J. Nace, Esquire of the law firm of Paulson & Nace, and in support thereof respectfully represents:

1. That on or about the 27<sup>th</sup> day of September, 2004, the Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code and the undersigned was subsequently appointed Interim Trustee.
2. The undersigned Trustee deems it necessary and in the best interest of this estate to employ D. Michael Burke, Esquire, and Barry J. Nace, Esquire as Trustee's legal counsel to pursue the Debtor's personal injury claim as a result of a vehicular accident, under a contingency fee arrangement with the same terms and conditions as originally entered into by the party herein and as more fully set forth in the contingency fee contract attached hereto as Exhibit "A" and incorporated herein by reference.
3. D. Michael Burke, Esquire, is an attorney with the law firm of Burke, Schultz, Harman & Jenkinson, located at 85 Aikens Center, Martinsburg, WV 25401; Barry J. Nace, Esquire is an attorney with the law firm of Paulson & Nace, located at 1814 N. Street NW,

, Washington, DC 20036, and are most knowledgeable of the Debtor's claim and are well qualified to act as special counsel herein.

4. D. Michael Burke, Esquire, and Barry J. Nace, Esquire represent no interest adverse to the Estate of the Debtor herein.

5. To the best of Applicant's knowledge, D. Michael Burke, Esquire, and Barry J. Nace, Esquire have had no connection with any creditors, or any other parties in interest or their respective attorneys adverse to this estate.

6. This application is not made at the recommendation of any party and is made solely at the instance of Applicant.

7. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, Applicant respectfully prays that D. Michael Burke, Esquire, and Barry J. Nace, Esquire, be approved as special counsel for the Trustee herein, under a contingency fee agreement.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, postage prepaid, to William A. O'Brien, Esquire, 201 East John Street, Martinsburg, WV 25402; to D. Michael Burke, Esquire, Burke, Schultz, Harman & Jenkinson, 85 Aikens Center, Martinsburg, WV 25401; to Barry J. Nace, Esquire, Paulson & Nace, 1814 N. Street NW, Washington, DC 20036 and electronically mailed to the Office of the U.S. Trustee at ustpregion04.ct.ecf at usdoj.gov this 2<sup>nd</sup> day of March, 2005.



/s/ Robert W. Trumble

Robert W. Trumble, Trustee  
275 Aikens Center  
Post Office Box 2509  
Martinsburg, WV 25402-2509  
Telephone: (304) 264-4621

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

Miller, Barbara Ann

CASE NO. 04-03365

DEBTOR.

AFFIDAVIT

STATE OF District of Columbia  
COUNTY OF Columbia

I, Barry J. Nace, Esquire, declare:

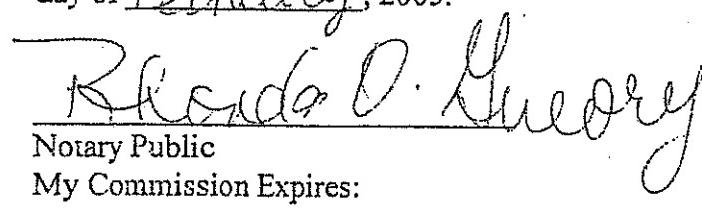
1. That I am an attorney with the law firm of Paulson & Nace located at 1814 N. Street NW, Washington, DC 20036.
2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.
3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.
4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.

  
Barry J. Nace, Esquire

SWORN TO AND SUBSCRIBED  
before me this 24<sup>th</sup>  
day of February, 2005.

  
Rhonda O. Gueory  
Notary Public

My Commission Expires:

RHONDA OLEAN GUEORY  
Notary Public, District of Columbia  
My Commission Expires May 31, 2006

0044

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

AFFIDAVIT

STATE OF WEST VIRGINIA:

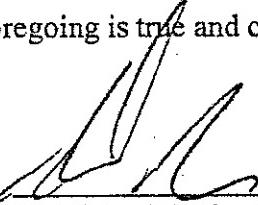
COUNTY OF Berkeley:

I, D. Michael Burke, Esquire, declare:

1. That I am an attorney with the law firm of Burke, Schultz, Harman & Jenkinson located at 85 Aikens Center, Martinsburg, WV 25402.
2. That I am experienced in rendering legal services of the same nature for which I am being employed on behalf of the Bankruptcy Estate.
3. That I am willing to accept employment by the Trustee on the basis set forth in the Application to Employ filed simultaneously herewith.
4. That I do not have any interest adverse to the Trustee or the Estate herein in regard to the matters for which it is to be employed and the practitioners thereof are disinterested persons within the meaning of 11 U.S.C. §101(14).

I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAITH NAUGHT.

  
D. Michael Burke, Esquire

SWORN TO AND SUBSCRIBED

before me this 1  
day of February, 2005.

Donna F. Weatherholtz  
Notary Public

My Commission Expires: 2/10/10

Official Seal  
Notary Public, State of West Virginia  
Donna F. Weatherholtz  
72 Buglers Way, Apt. #8  
Falling Waters, WV 25419  
My commission expires 2-10-10

CONTRACT OF EMPLOYMENT AND AUTHORITY TO REPRESENT

I, Barbara Miller, adminx of the Estate of Paul D. M. Miller, do hereby retain and employ D. Michael Burke as my attorney to represent me in my claim against D. r. Carrier or whoever is liable for my injuries or damages resulting from an accident or incident which occurred on or about 3-19-03 at CHI in Martinsburg.

As compensation for his services, I hereby agree to pay D. Michael Burke from the proceeds of recovery the following fee:

Thirty-three and one-third percent (33-1/3%) if the case is resolved at any time prior to trial, and forty percent (40%) of all sums collected if the case results in trial. (Negligence cases)

Forty percent (40%) of all sums collected (Medical Malpractice cases and Product Liability cases).

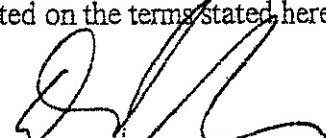
It is understood and agreed that this employment is upon a contingent basis and if no recovery is made I will not be indebted to any attorney for any sum whatsoever for the attorney's fee as long as this contract is in effect. I also understand that I am responsible for out-of-pocket expenses incurred by my attorney in the prosecution of my claim and I authorize my attorney to deduct from the proceeds of my recovery the out-of-pocket expenses he has incurred.

My attorney is authorized to deduct from the proceeds of any recovery the amount of any unpaid medical or hospital expenses incurred as a result of the claim in question and remit the same directly to the hospital and/or doctors involved.

Dated at Martinsburg, West Virginia, on this the 5th day of Feb 2004.

Barbara A. Miller  
NAME

The above employment is hereby accepted on the terms stated herein.

  
D. Michael Burke

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO. 04-03365

Miller, Barbara Ann

DEBTOR.

---

**ORDER AUTHORIZING TRUSTEE TO EMPLOY SPECIAL COUNSEL**

Upon the annexed application of Robert W. Trumble, Trustee of the estate of the above-named Debtor, Barbara Ann Miller, for authority to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace to serve as special counsel for the Trustee on a contingency basis in connection with the pursuit of the Debtor's personal injury claim, and it appearing that no notice need be given, no adverse interest having been represented and, the Court being satisfied that said law firm represents no interest adverse to the Trustee of the Estate of the Debtor in the matters affecting the administration of this Estate, that such employment is necessary and would be in the best interest of the Estate herein, and that the case is one justifying special counsel, it is

ORDERED, that said Trustee be, and hereby is, authorized and empowered to employ D. Michael Burke, Esquire, of the law firm of Burke, Schultz, Harman & Jenkinson and Barry J. Nace, Esquire, of the law firm of Paulson & Nace as special counsel to represent the Trustee on a contingency basis.

[END OF DOCUMENT]

PAULSON & NACE

ATTORNEYS AT LAW

Richard S. Paulson (1929-1986)  
J. Nace (DC, MD, PA, WV)  
CERTIFIED IN CIVIL TRIAL ADVOCACY  
BY THE NATIONAL BOARD OF TRIAL ADVOCACY  
CERTIFIED IN MEDICAL MALPRACTICE  
BY THE AMERICAN BOARD OF PROFESSIONAL  
LIABILITY ATTORNEYS

1615 New Hampshire Avenue, NW  
Washington, DC 20009-2520  
Phone (202) 463-1999  
Fax (202) 223-6824  
[www.paulsonandnace.com](http://www.paulsonandnace.com)

Christopher T. Nace (DC, MD, GA)  
Jonathan B. Nace (DC, MD)  
Matthew A. Nace (MD)

February 4, 2009

Via U.S. Mail.

Robert W. Trumble, Trustee  
McNeer, Highland, McMunn & Varner, LC  
275 Aikens Center  
P.O. Box 2509  
Martinsburg, WV 25402-2509

**RE: Miller, Barbara A.  
Bankruptcy Case No.: 04-03365**

Dear Mr. Trumble:

This is in response to your letter of January 5, 2009. I was out of the country for most of the month of January and I am just now catching up on some mail. Your letter stated that I violated my duty to you as you are my client. You suggested that I put my malpractice carrier on notice regarding your determination that I breached a duty to you. You told me that you would be contacting the appropriate State Bars because of my "disregard for the Rules of Professional Conduct" as it relates to representation of you.

Let me point out that your October 10, 2008 letter had only not been sent to me previously, but apparently it was not sent to Mr. Burke either, so I must question any assertion you make about communication. So I have been criticized by you for not responding to a letter that apparently you did not send out to anyone.

Quite frankly I view your comments, as harsh and incorrect as they are, as an attempt to cover your own failures or perhaps somehow bully someone into succumbing to your wishes via threats. I doubt that such conduct fulfills the Rules of Professional Conduct.

I have now spent my time trying to understand what is going on, or at least, what you believe is going on. My best efforts follow.

Apparently at some point in time you contacted D. Michael Burke, Esq., who at the time was representing Ms. Barbara A. Miller and the estate of her husband. (Mr. Burke eventually was not able to represent Ms. Miller or the estate because of a conflict.) At some point in time someone apparently contacted this office and spoke to an associate and while never talking to me sent an affidavit to that associate in my office who was working on the case sometime around February of 2005. Apparently there were/are bankruptcy proceedings involving Ms. Miller. While I have asked for documentation of your assertions, you have never sent me anything

0048

PAULSON &amp; NACE

Robert W. Trumble, Trustee

February 4, 2009

Page 2 of 3

concerning the apparent bankruptcy of Ms. Barbara Miller. We did send an affidavit to you. But, I still have no idea even what the amount of the debt is.

To the best of my knowledge, I then heard nothing further concerning this matter from you or anyone else in your office since 2005 with one exception as set out below until this sudden flurry of activity. You have now for the first time sent me what's entitled a "Trustees application to employ special counsel". I had never seen it before.

In paragraph 2 of that application, you indicated that Mr. Burke and I were to represent the bankruptcy estate in pursuing Ms. Miller's personal injury claim as a result of a "vehicular accident." Understand very clearly that at no time have I represented Ms. Miller or her husband's estate in a vehicular accident case. And, you have not presented any Retainer Agreement from me.

You also attached an "Order Authorizing Trustee to Employ Special Counsel," at the top of which there is apparently a stamped and signed entering of the Order. This I never saw during the pendency of my representation of Ms. Miller as administratrix of the estate of her husband. In fact, the notice of electronic filing that you have now also attached, does not show either myself nor Mr. Burke as having received such notice. Simply put, I had no notice that the Order was signed for any bankruptcy proceeding or to represent you, as you put it. As a result, I had no notice that you decided to file the application to employ special counsel nor that such an order had been entered in March of 2005.

It also appears that you did nothing during the entire time that I was representing Ms. Miller as administratrix of her husband's estate while the case was ongoing in Martinsburg, after the jury verdict was published in the newspaper, or even after the appeal by the defense was rejected. Never did I hear from you, with one exception.

Then suddenly sometime after the distribution of funds, someone, presumably you, called me – I told you (or whomever called) I did not know what you were talking about but I asked you (or someone) to send me a letter and documentation. Distribution had already taken place. I heard nothing more until your letter at the end of last year, to which I responded.

Thus, I did not represent Ms. Miller in a vehicular accident, I did not receive notice from you that you had filed the "application," I did not receive notice from you or the Court that the order had been granted, and I heard nothing from you since sometime apparently in February of 2005 until long after the proceeds had been distributed pursuant to the jury's verdict in a medical malpractice claim.

In short, you failed to give us any notice, I had no knowledge that in fact I was representing you, I did not represent Ms. Miller in any vehicular accident, I did not violate any

PAULSON & NACE

Robert W. Trumble, Trustee

February 4, 2009

Page 3 of 3

Rules of Professional Conduct and now you are telling me that you are my client. That does not make it so.

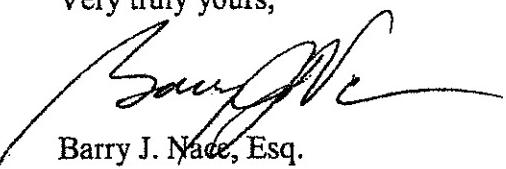
So Mr. Trumble, I suggest that if you wanted me to represent you, that you should have so specified since I only represented Ms. Miller in a medical malpractice case and you should have been attentive enough to submit such information to me once the order was signed and you should not have sat at your desk and done nothing for most of three years. Did you ever check the file in the case? Ever correspond with me? Get any reports from my office? And yet you threaten me. Frankly, I do not respond well to threats.

Further, I would like to see your billing file representing what you have done in your position as "Trustee" for which I suspect you have billed our Government. Perhaps you should put your carrier on notice and perhaps you should notify the Government about what you haven't done as you collected a fee.

I would also point out that to this day, I have no idea what you are talking about as far as how much is involved etc.

So before you threaten me and carry out such threats, I would suggest that you get your own house in order. It does little good to tell me (after not hearing from you for three years) that you believe I am unprofessional, that I violated a duty to you, or that I am unethical. I doubt you would like to hear that about yourself. Better that you stop delivering ultimatums and start supporting your position.

Very truly yours,

  
Barry J. Nace, Esq.

BJN/bcb

cc. D. Michael Burke, Esq.